



Opening Borders in Africa: Economic Development, Socio-Economic Rights, and the #PutSouthAfricaFirst Discourse

Katlego Arnold Mashego ^{1,*}, Tshilidzi Knowles Khangala ²

Department of Law, Safety and Security Management, Faculty of Humanities,
Tshwane University of Technology, Pretoria, South Africa

*Corresponding author: kat.vsp@gmail.com

© Author (s)

OIDA International Journal of Sustainable Development, Ontario International Development Agency, Canada.

ISSN 1923-6654 (print) ISSN 1923-6662 (online) www.oidaijsd.com

Also available at <https://www.ssrn.com/index.cfm/en/oida-intl-journal-sustainable-dev/>

Abstract: Debates around the opening of borders in Africa have intensified in recent years, particularly in relation to economic development, migration, and the enforcement of socio-economic rights. Proponents argue that the free movement of goods and people can enhance intra-African trade, promote skills transfer, and support economic growth. Critics, however, caution that open borders may place additional pressure on public services, labour markets, and already strained socio-economic rights systems in certain countries. This paper examines the relationship between the opening of borders, economic development, and the enforcement of socio-economic rights in Africa, with a specific focus on South Africa. It analyses South Africa's constitutional framework for socio-economic rights and compares it with selected African constitutions. The paper further considers the role of institutions responsible for enforcing these rights, including the courts, the South African Human Rights Commission, and non-governmental organisations. Using the #PutSouthAfricaFirst discourse as a point of reference, the paper explores public resistance to migration and the perceived impact of cross-border movement on access to housing, healthcare, education, food, water, and social security. The analysis demonstrates that while regional integration remains an important long-term goal, the effective enforcement of socio-economic rights is closely linked to domestic economic capacity, institutional effectiveness, and governance. The paper argues that, in the current context, strengthening national economies and socio-economic rights frameworks remains a critical priority.

Keywords: Africa, Borders, economic development, constitution, socio-economic rights

Introduction

The call for the opening of borders in Africa is not a recent development. As early as the 1960s, African leaders advocated for continental unity as a pathway to economic development and political independence. One of the strongest voices in this regard was Dr Kwame Nkrumah, who argued that Africa's survival and development depended on collective action rather than isolated national efforts (Nkrumah, 1963). Despite this early vision, African states largely retained rigid border controls, prioritising national sovereignty over regional economic integration.

The idea of opening borders encompasses both the movement of people and the facilitation of trade. In practice, intra-African trade remains limited due to restrictive border controls, administrative delays, and inconsistent regulatory frameworks across states. These challenges have contributed to weak regional trade links and have limited Africa's ability to develop strong internal markets (African Union, 2018). As a result, many African countries continue to trade more easily with non-African states than with neighbouring countries, reinforcing dependency on external markets and slowing domestic economic growth.

Economic stagnation has had a direct impact on the enforcement of socio-economic rights across the continent. Socio-economic rights such as access to housing, healthcare, education, water, and social assistance are widely recognised in international and regional instruments, including the International Covenant on Economic, Social and Cultural Rights and the African Children's Charter. However, in many African states, including South Africa, these rights

remain inadequately realised due to limited resources, high unemployment, and structural inequality (Liebenberg, 2002; Bilchitz, 2003).

The primary objective of this paper is to examine the relationship between the opening of African borders, economic development, and the enforcement of socio-economic rights. While the discussion considers the broader African context, the paper focuses specifically on South Africa. South Africa provides a useful case study due to its constitutional entrenchment of socio-economic rights and its relatively developed institutional framework for enforcement, including the courts, the South African Human Rights Commission (SAHRC), and civil society organisations (Currie & De Waal, 2013; SAHRC, 2002).

In his address to African leaders on 24 May 1963, Dr Kwame Nkrumah warned that Africa faced a stark choice between unity and continued underdevelopment. He emphasised that Africa possesses vast natural and economic resources yet continues to experience poverty and inequality because these resources are not collectively harnessed for the benefit of African people (Nkrumah, 1963). He further argued that no African state could achieve meaningful development independently, a position that remains relevant given the continent's continued struggles with slow growth and underdevelopment.

More recently, efforts to advance economic integration have taken a formal legal shape through instruments such as the African Continental Free Trade Area (AfCFTA). The AfCFTA seeks to promote intra-African trade by reducing tariffs, addressing non-tariff barriers, and improving market access among African states (African Union, 2018). While the agreement focuses primarily on trade, it has reignited broader debates about the desirability and implications of opening borders more generally.

Nevertheless, the opening of borders, particularly with regard to the free movement of people, remains a contested issue. Many states express concern about the potential pressure on employment, public services, and social cohesion. These concerns are particularly visible in South Africa, where migration has become closely linked to debates around unemployment, access to housing, healthcare, and social assistance (Statistics South Africa, 2018; Joint Submission to the CESCR, 2018).

This paper is divided into three main sections. The first examines the concept of open borders in Africa and the rationale behind regional integration. The second analyses socio-economic rights under the South African Constitution and selected African constitutions. The third considers the role of institutions responsible for enforcing socio-economic rights, with particular emphasis on the courts, the SAHRC, and non-governmental organisations.

Socio-Economic Rights in terms of the South African Constitution and other African Constitutions

Socio-economic rights are central to the realisation of the constitutional values of human dignity, equality, and freedom. Where individuals lack access to basic necessities such as housing, healthcare, food, water, education, and social security, these foundational values remain largely theoretical (Liebenberg, 2002; Currie & De Waal, 2013). In this sense, socio-economic rights give practical content to democratic governance and social justice.

Although the South African Constitution protects a wide range of socio-economic rights, this paper focuses on the rights of access to adequate housing, healthcare, food, water, social security, and education. These rights are particularly significant within the African context, where poverty, inequality, unemployment, and migration place sustained pressure on state resources. A comparative overview of selected African constitutions is included to situate South Africa's framework within broader continental practice.

Comparative Constitutional Approaches to Socio-Economic Rights in Africa

African constitutions generally reflect three approaches to socio-economic rights: direct constitutional protection, partial protection through enforceable provisions, and programmatic recognition through directive principles. This section considers countries that provide direct constitutional protection, namely Angola, Cabo Verde, Congo, Mozambique, and Seychelles. These states were selected because they represent different regions of Africa and explicitly entrench socio-economic rights in their constitutions.

In Angola, socio-economic rights are protected in Chapter III of the Constitution under Economic, Social and Cultural Rights and Duties. Similar protection is found in Cabo Verde under Part II, Title III of its Constitution. The Congolese Constitution guarantees these rights under Title II, Chapter 2, while Mozambique and Seychelles provide protection within their respective bills of rights. Many African constitutions also include special protection for vulnerable groups, including children, women, persons with disabilities, and older persons, reflecting a regional commitment to inclusive social protection (African Union, 2018).

a) The Right of Access to Adequate Housing

Section 26(1) of the South African Constitution provides that “everyone has the right to have access to adequate housing.” The wording of the provision makes clear that the right is not an immediate entitlement to housing on demand but is subject to progressive realisation within available resources. This has led scholars to classify the right as a qualified socio-economic right (Liebenberg, 2002).

In *Government of the Republic of South Africa v Grootboom* (2001), the Constitutional Court clarified the nature and scope of this right. The Court distinguished between a right to housing and a right of access to adequate housing, emphasising that housing includes access to land, basic services, and infrastructure. The Court further developed the reasonableness standard, requiring the State to adopt housing programmes that are comprehensive, coordinated, and capable of addressing the needs of those in most desperate circumstances (Grootboom, 2001; Bilchitz, 2003).

Despite this jurisprudence, access to adequate housing remains uneven. Persistent housing backlogs and the growth of informal settlements illustrate the challenges associated with the progressive realisation of this right. While significant numbers of housing units have been delivered since 1994, many individuals continue to live in inadequate conditions.

Comparable protection exists in other African constitutions. Angola, Cabo Verde, Congo, Mozambique, and Seychelles all recognise the right to housing or shelter, although the scope and wording differ. In each case, the obligation placed on the State is linked to economic capacity and development priorities.

b) The Right to Health Care

Section 27(1)(a) of the South African Constitution guarantees everyone the right of access to healthcare services, while section 27(3) prohibits the refusal of emergency medical treatment. As with housing, this right is subject to progressive realisation and available resources (Liebenberg, 2002).

In *Soobramoney v Minister of Health, KwaZulu-Natal* (1998), the Constitutional Court held that resource constraints justified limiting access to dialysis treatment. The Court adopted a rationality-based approach and declined to interfere with policy decisions taken in good faith by health authorities. This approach has been criticised for offering limited guidance on the substantive content of the right to health (Bilchitz, 2003).

A more interventionist approach was adopted in *Minister of Health v Treatment Action Campaign* (2002). Applying the reasonableness standard developed in *Grootboom*, the Court found that government restrictions on access to antiretroviral medication were unreasonable and ordered the expansion of treatment programmes. The judgment confirmed that policies must respond to the needs of those who are unable to access healthcare through alternative means.

Despite constitutional protection, South Africa’s public healthcare system continues to face challenges, including uneven service quality, infrastructure deficits, staff shortages, and discrimination against vulnerable groups (SAHRC, 2018). Similar constitutional guarantees exist in Angola, Cabo Verde, Congo, Mozambique, and Seychelles, where the right to health is framed as a shared responsibility between the State and society.

c) The Rights to Food, Water, and Social Security

Section 27(1)(b) and (c) of the Constitution guarantees the rights of access to sufficient food, water, and social security. These rights are also subject to progressive realisation. While South Africa has implemented measures such as social grants, school nutrition programmes, and water services legislation, food insecurity and poverty remain widespread (Statistics South Africa, 2018).

In *Khosa v Minister of Social Development* (2004), the Constitutional Court held that excluding permanent residents from access to social grants was unconstitutional. The Court emphasised that social security plays a vital role in protecting human dignity and promoting equality, particularly for vulnerable groups.

Other African constitutions reflect varying levels of protection. Cabo Verde, Congo, and Seychelles explicitly recognise social security and food-related rights, while Angola and Mozambique provide more limited or indirect protection. These differences reflect variations in economic capacity and social policy priorities.

d) The Right to Education

Section 29 of the South African Constitution protects the right to basic education as an immediately realisable right, while access to further education is subject to progressive availability. This distinction has been recognised in both academic commentary and judicial interpretation (Liebenberg, 2002).

In *Minister of Basic Education v Basic Education for All* (2016), the Court held that the failure to provide prescribed textbooks violated the right to basic education. The judgment confirmed that the State bears a direct obligation to provide essential educational resources.

Although South Africa has achieved high enrolment rates, concerns remain regarding educational quality, learner retention, and inequality. Similar constitutional protection of the right to education exists in Angola, Cabo Verde, Congo, Mozambique, and Seychelles, as well as in international instruments such as the ICESCR and the African Charter on the Rights and Welfare of the Child.

Institutions Working Towards the Enforcement of Socio-Economic Rights

The enforcement of socio-economic rights in South Africa is supported by a range of institutions, most notably the courts, the South African Human Rights Commission (SAHRC), and non-governmental organisations (NGOs). These institutions perform complementary functions aimed at ensuring that socio-economic rights are respected, protected, and progressively realised in accordance with constitutional obligations.

a) The Role of the Courts in the Enforcement of Socio-Economic Rights

The South African Constitution establishes the courts as independent and impartial forums for the adjudication of constitutional rights, including socio-economic rights (Constitution of the Republic of South Africa, 1996). Courts are tasked with interpreting the Constitution and ensuring that legislative and executive action complies with constitutional standards.

Through its jurisprudence, the Constitutional Court has played a central role in developing the content and enforceability of socio-economic rights. In *Government of the Republic of South Africa v Grootboom* (2001), the Court affirmed that socio-economic rights are justiciable and subject to judicial scrutiny. The Court introduced the reasonableness standard, which requires the State to adopt and implement measures that are comprehensive, coordinated, and capable of addressing the needs of those living in extreme deprivation (Grootboom, 2001; Liebenberg, 2002).

Similarly, in *Soobramoney v Minister of Health, KwaZulu-Natal* (1998), the Court acknowledged the impact of limited resources on the realisation of socio-economic rights. While the Court declined to interfere with health policy decisions in that case, it confirmed that such decisions remain subject to constitutional review (Soobramoney, 1998; Currie & De Waal, 2013).

Although *S v Makwanyane* (1995) primarily concerned civil and political rights, the Court articulated an important principle relevant to socio-economic rights, namely that all rights in the Bill of Rights are interrelated and mutually reinforcing. The Court emphasised that human dignity, equality, and freedom cannot be realised in circumstances where individuals lack access to basic necessities such as food, shelter, and healthcare (Makwanyane, 1995).

Collectively, these judgments demonstrate that the courts serve as a critical mechanism for accountability and constitutional compliance in relation to socio-economic rights.

b) The Role of the South African Human Rights Commission

The SAHRC is a Chapter 9 institution established by the Constitution to strengthen constitutional democracy and promote the observance of human rights (Constitution of the Republic of South Africa, 1996). One of its key mandates is the monitoring and assessment of the realisation of socio-economic rights.

Section 184(3) of the Constitution requires the SAHRC to request information annually from organs of state regarding measures taken to realise rights relating to housing, healthcare, food, water, social security, education, and the environment. This reporting mechanism enables the Commission to evaluate government performance and to identify gaps in policy implementation (SAHRC Act 40 of 2013).

The SAHRC has produced numerous reports assessing the reasonableness of government programmes, budgetary allocations, and legislative frameworks related to socio-economic rights (South African Human Rights Commission, 2002; SAHRC, 2017). These reports have highlighted persistent challenges, including inadequate coordination, insufficient resources, and the exclusion of vulnerable groups.

The courts have recognised the importance of the SAHRC's role. In *Grootboom*, the Constitutional Court directed the Commission to monitor and report on the State's compliance with the judgment, underscoring the Commission's oversight function in the enforcement of socio-economic rights (*Grootboom*, 2001).

In addition to its constitutional mandate, the SAHRC is empowered by statute to monitor South Africa's compliance with international and regional human rights instruments, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) (South African ICESCR State Report, 2017).

c) The Role of Non-Governmental Organisations

Non-governmental organisations play an important supportive role in the enforcement of socio-economic rights, particularly for marginalised and vulnerable communities. NGOs engage in strategic litigation, advocacy, research, public education, and community mobilisation aimed at promoting access to basic services and holding the State accountable.

In South Africa, organisations such as Black Sash, the Dullah Omar Institute, the People's Health Movement of South Africa, the Socio-Economic Rights Institute of South Africa, and the Studies in Poverty and Inequality Institute have been particularly active in advancing socio-economic rights.

Black Sash focuses primarily on social security and social protection, with an emphasis on women, children, and older persons (BlackSash, 2020). The Dullah Omar Institute contributes through research, teaching, and advocacy on constitutional governance and socio-economic rights (Dullah Omar Institute, 2020). The People's Health Movement of South Africa works to advance the right to health through grassroots mobilisation and policy engagement (PHM-SA, 2020).

The Socio-Economic Rights Institute of South Africa concentrates on housing rights, protection against unlawful evictions, access to basic services, and labour-related socio-economic rights (SERI, 2020). The Studies in Poverty and Inequality Institute provides policy analysis and budget reviews to assess the State's efforts to address poverty and inequality (SPII, 2016).

Through these combined efforts, NGOs contribute to the practical realisation of socio-economic rights by bridging the gap between constitutional promises and lived realities.

Conclusion

This paper examined the relationship between the opening of African borders, economic development, and the enforcement of socio-economic rights, with particular reference to South Africa. While continental integration and cooperation have long been promoted as pathways to economic growth, the analysis demonstrates that the free movement of people presents complex challenges, especially for countries with comparatively stronger economies and more developed constitutional frameworks.

South Africa's Constitution provides extensive protection for socio-economic rights, including access to housing, healthcare, food, water, social security, and education (Constitution of the Republic of South Africa, 1996). The Constitutional Court has played a significant role in giving content to these rights through landmark judgments such as *Grootboom*, *Soobramoney*, and *Treatment Action Campaign*, thereby affirming the justiciability of socio-economic rights and the State's obligation to take reasonable measures towards their progressive realisation (*Grootboom*, 2001; *TAC*, 2002; Liebenberg, 2002).

The paper further demonstrated that several other African constitutions also provide for socio-economic rights, although levels of enforcement and institutional capacity differ across jurisdictions. Courts, national human rights institutions, and civil society organisations have contributed meaningfully to the promotion and protection of these rights, particularly in South Africa through judicial oversight, monitoring, advocacy, and litigation (SAHRC, 2017; Currie & De Waal, 2013).

However, the opening of borders for the free movement of people raises concerns in contexts where socio-economic rights are already under strain. In South Africa, high levels of unemployment, inequality, and pressure on public services complicate the State's ability to progressively realise socio-economic rights for all residents. Public resistance

to increased migration, as reflected in social movements and public discourse, highlights the socio-political sensitivity of the issue (Statistics South Africa, 2018).

The findings suggest that, at present, the unrestricted opening of borders is unlikely to address the core challenges facing many African countries, particularly the inadequate enforcement of socio-economic rights. Instead, the effective realisation of these rights appears closely linked to domestic economic development, institutional capacity, and good governance. Strengthening national economies, improving service delivery, and enhancing accountability mechanisms remain critical steps towards improving the living conditions of citizens.

In this context, regional integration efforts should proceed cautiously and in a manner that aligns with the economic and social realities of individual states. Prioritising sustainable economic development within African countries may better support the long-term advancement of socio-economic rights and social stability across the continent.

References

1. African Charter on the Rights and Welfare of the Child. (1990)
2. African Union. (2018). Protocol to the African Charter on Human and Peoples' Rights on the Rights of Citizens. African Union.
3. Bateman, C. (2013). Drug stock-outs: Inept supply-chain management and corruption. *South African Medical Journal*, 103(9), 600–602. <http://samj.org.za/index.php/samj/article/view/7332/5356>
4. Bilchitz, D. (2003). Towards a reasonable approach to the minimum core: Laying the foundations for future socio-economic rights jurisprudence. *South African Journal on Human Rights*, 19, 1–26.
5. Black Sash. (2020). Official website. <https://www.blacksash.org.za/>
6. Constitution of the Republic of Angola, 2010.
7. Constitution of the Republic of Cabo Verde, 2010.
8. Constitution of the Democratic Republic of the Congo, 2005.
9. Constitution of the Republic of Mozambique, 2004.
10. Constitution of the Republic of Seychelles, 1993 (as amended).
11. Constitution of the Republic of South Africa, 1996.
12. Convention on the Rights of the Child.
13. Currie, I., & De Waal, J. (2013). *The Bill of Rights handbook* (6th ed.). Juta.
14. Dullah Omar Institute for Constitutional Law, Governance and Human Rights. (2020). Official website. <https://dullahomarinstitute.org.za/>
15. Franklin, S., & McLaren, D. (2015). Realising the right to basic education in South Africa: An analysis of the content, policy effort, resource allocation and enjoyment of the constitutional right to basic education. *Studies in Poverty and Inequality Institute*.
16. *Government of the Republic of South Africa v Grootboom and Others* [2000] ZACC 19; 2001 (1) SA 46 (CC).
17. International Covenant on Economic, Social and Cultural Rights. (1966).
18. *Khosa and Others v Minister of Social Development and Others; Mahlaule and Another v Minister of Social Development* [2004] ZACC 11; 2004 (6) SA 505 (CC).
19. Liebenberg, S. (2002). South Africa's evolving jurisprudence on socio-economic rights: An effective tool in challenging poverty? *Law, Democracy & Development*, 6(2), 159–191.
20. *Makwanyane and Another v S* [1995] ZACC 3; 1995 (3) SA 391 (CC).
21. *Minister of Basic Education v Basic Education for All* [2015] ZASCA 198; 2016 (4) SA 63 (SCA).
22. *Minister of Health and Others v Treatment Action Campaign and Others* [2002] ZACC 15; 2002 (10) BCLR 1033 (CC).
23. National Development Plan. (2012). Government of South Africa.
24. Nkrumah, K. (1963, May 24). We must unite now or perish. Address to the Organisation of African Unity. <https://newafricanmagazine.com/3721/>
25. People's Health Movement of South Africa. (2020). Official website. <http://phm-sa.org/>
26. *Sarrahwitz v Maritz N.O. and Another* [2015] ZACC 21.
27. *Soobramoney v Minister of Health, KwaZulu-Natal* [1997] ZACC 17; 1998 (1) SA 765 (CC).
28. South African Human Rights Commission. (2002). 4th Economic and social rights report: Housing (2000–2002).

29. South African Human Rights Commission. (2017). NHRI report to the UN Committee on Economic, Social and Cultural Rights.
30. South African Human Rights Commission Act 40 of 2013.
31. South African ICESCR State Report. (2017). Government of South Africa.
32. Socio-Economic Rights Institute of South Africa. (2020). Official website. <https://www.seri-sa.org>
33. Statistics South Africa. (2018). General household survey. Stats SA.
34. Statistics South Africa. (2020). National poverty lines. Stats SA.
35. Studies in Poverty and Inequality Institute. (2016). Budget analysis for advancing socio-economic rights.
36. Universal Declaration of Human Rights. (1948).
37. Water Services Act 108 of 1997.

About Authors

Katlego Arnold Mashego is a lecturer at the Tshwane University of Technology with a number of years lecturing at different Institutions of Higher Learning. In terms of qualifications, he has National Diploma in Legal Assistance (TUT), Certificate in International Business Management (Osnabrück University of Applied Sciences, Germany), Bachelor of Laws (LLB) (Unisa), B Tech: Business Administration (TUT), Master of Laws (LLM) (UWC) and he is currently a Doctor of Laws (LLD) (UWC) candidate. He presented at both national and international conferences. He has published a number of articles and book chapters. His research interest includes international trade law, human rights and socio-economic rights.

Tshilidzi Knowles Khangala is a lecturer at the Tshwane University of Technology and admitted Advocate of the High Court of South Africa. He was a Deputy Director in Gauteng Department of Education for 6 years. He has an LLB and LLM (University of Venda), Postgraduate Diploma in Public Administration (UNISA). He is an LLD candidate (UWC). He presented at both national and international conferences. He has published a number of articles and book chapters. His research interest includes constitutional law, human rights, parliamentary studies, law of evidence and criminal law/procedure.

